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3:00-CV-01864 TINSKY V. CB RICHARD ELLIS INC

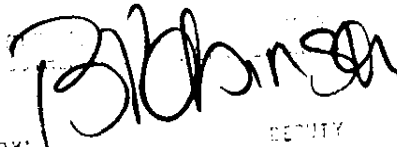
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00 OCT 27 PM 3:46

BY:  SECURITY

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Attorneys for Defendants
CB RICHARD ELLIS, INC.
(formerly known as CB Commercial Real Estate Group, Inc.)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SUSAN RIGGS TINSKY, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

CB RICHARD ELLIS, INC., a
California corporation; CB
COMMERCIAL REAL ESTATE
GROUP, INC., a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: '00 CV 1864 JM (RBB)

**NOTICE OF MOTION AND
MOTION TO STAY**

**DATE: November 27, 2000
TIME: 10:30 a.m.
COURTROOM: 6
JUDGE: Honorable Jeffrey T. Miller**

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 27, 2000 at 10:30 a.m., or as soon
thereafter as counsel may be heard, in Courtroom 6 of the above-entitled Court, located
at 880 Front Street, San Diego, California, 92101, Defendant CB Richard Ellis, Inc. will

NBI:496170.1

Notice of Motion and Motion to Stay

1 move and hereby moves this Court for an order staying this action pending the outcome
 2 of *Harris v. CB Richard Ellis, Inc., et al.*, Case No. GIC 745044, currently pending in
 3 Superior Court of California, County of San Diego.

4 This motion is made pursuant to the doctrine articulated by the United States
 5 Supreme Court in *Colorado River Water Conservation District v. United States*, 424
 6 U.S. 800 (1976), which allows federal courts to stay a parallel state court action in the
 7 interest of "wise judicial administration giving regard to conservation of judicial
 8 resources and comprehensive disposition of litigation." *Id.* at 817. Here, the
 9 allegations, legal and factual issues, and remedies sought are almost identical to those in
 10 the *Harris* litigation and under the factors identified in *Colorado River* and its progeny,
 11 a stay of this lawsuit is appropriate.

12 This motion is based on this Notice of Motion and Motion, the Memorandum of
 13 Points and Authorities and the Declaration of Mary P. Palmer, all filed concurrently
 14 herewith, as well as the pleadings on file in this action and such further evidence and
 15 argument as may be permitted at the hearing of this matter.

16 Dated: October 27, 2000

17 GREGORY A. BOSS
 ELLIS D. REITER, JR.
 WALLACE L. ROSVALL

18 O'MELVENY & MYERS LLP
 19 GORDON E. KRISCHER
 MICHAEL G. MCGUINNESS
 20 MARY P. PALMER

21 By Mary P. Palmer
 22 Mary P. Palmer
 23 Attorneys for Defendant
 24 CB RICHARD ELLIS, INC., formerly
 known as CB COMMERCIAL REAL
 ESTATE GROUP, INC.

PROOF OF SERVICE

I, Marisela Arvayo, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660. On October 27, 2000, I served the within documents:

NOTICE OF MOTION AND MOTION TO STAY

☐ by transmitting via facsimile machine the document(s) listed above to the fax number(s) set forth below on this date at approximately 3:28 PM. The outgoing facsimile machine telephone number in this office is 949-823-6994. The facsimile machines used in this office create a transmission report for each outgoing facsimile transmitted. A copy of the transmission report(s) for the service of this document, properly issued by the facsimile machine(s) that transmitted this document and showing that such transmission was (transmissions were) completed without error, is attached hereto.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ by putting a true and correct copy thereof, together with an unsigned copy of this declaration, in a sealed envelope designated by the carrier, with delivery fees paid or provided for, for delivery the next business day to the person(s) listed above, and placing the envelope for collection today by the overnight courier in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of overnight courier correspondence. In the ordinary course of business, such correspondence collected from me would be processed on the same day, with fees thereon fully prepaid, and deposited that day in a box or other facility regularly maintained by _____, which is an express carrier.



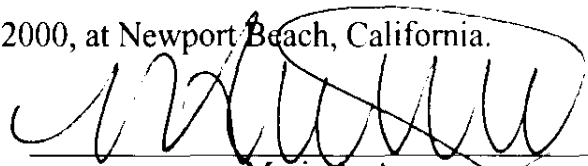
2 by putting a true and correct copy thereof, together with an unsigned copy
3 of this declaration, in a sealed envelope, with Express Mail postage fully
4 prepaid to the person(s) listed above, and placing the envelope for
5 collection and mailing today with the United States Postal Service as an
6 Express Mail item in accordance with the firm's ordinary business
7 practices. I am readily familiar with this firm's practice for collection and
8 processing of Express Mail correspondence for mailing with the United
9 States Postal Service. In the ordinary course of business, Express Mail
10 correspondence collected from me would be processed on the same day,
11 with Express Mail postage thereon fully prepaid, and placed for deposit that
12 day with the United States Postal Service by depositing it that same day in
13 a post office, mailbox, subpost office, substation, mail chute, or other like
14 facility regularly maintained by the United States Postal Service for receipt
15 of Express Mail.

9 David J. Strauss, Esq.
10 Denise N. Asher, Esq.
11 Strauss & Asher
12 750 "B" Street, Suite 1950
13 San Diego, CA 92101

Kevin J. McInerney, Esq.
Kelly J. McInerney, Esq.
18124 Wedge Parkway
Reno, NV 89511

12 I declare under penalty of perjury under the laws of the United States that
13 the above is true and correct.

14 Executed on October 27, 2000, at Newport Beach, California.

15 
16 _____
17 Marisela Arvayo
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